

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 MICHAEL DUANE WILSON,

8 *Petitioner,*

9 vs.

10 ROBERT LEGRAND, *et al.*,

11 *Respondents.*
12

3:14-cv-00071-RCJ-VPC

ORDER

13 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's
14 application (#1) to proceed *in forma pauperis*, motion (#1-5) for leave to file a longer than
15 normal petition, and motion (#1-6) for appointment of counsel, as well as for initial review.

16 On the pauper application, the Court finds, following review of the record of petitioner's
17 recurring deposits and discretionary expenditures, that petitioner has the ability to pay the
18 \$5.00 filing fee within a reasonable time. The application therefore will be denied. The
19 pauper application otherwise establishes petitioner's financial eligibility for appointment of
20 counsel.

21 On the counsel motion, the Court finds that the appointment of counsel for the
22 financially eligible petitioner is in the interests of justice herein, given: (a) the lengthy sentence
23 structure, which includes multiple concurrent sentences of life with eligibility for parole; (b) the
24 number and complexity of the substantive and procedural issues potentially involved in the
25 case; and (c) the prospect that there potentially may be substantial time remaining in the
26 federal limitation period at the filing of the *pro se* original petition for federal habeas counsel
27 to develop and present claims. The Court therefore will provisionally appoint counsel subject
28 to payment of the filing fee.

1 IT THEREFORE IS ORDERED that petitioner's application (#1) to proceed *in forma*
2 *pauperis* is DENIED. Petitioner shall have **thirty (30) days** from entry of this order within
3 which to have the filing fee of five dollars (\$5.00) sent to the Clerk of Court. The Clerk shall
4 SEND petitioner two copies of this order. Petitioner shall make the necessary arrangements
5 to have one copy of this order attached to the check paying the filing fee. Failure to timely
6 comply with this order will result in the dismissal of this action without further advance notice.

7 IT FURTHER IS ORDERED that the Clerk shall file the petition and accompanying
8 motions.

9 IT FURTHER IS ORDERED that the motion for appointment of counsel is GRANTED
10 and that the Clerk shall note the grant of the motion by this order on the docket in a manner
11 consistent with the Clerk's current practice. The counsel appointed will represent petitioner
12 in all proceedings related to this matter, including any appeals or *certiorari* proceedings,
13 unless allowed to withdraw.

14 IT FURTHER IS ORDERED that the Federal Public Defender shall be provisionally
15 appointed as counsel and shall have **thirty (30) days** to undertake direct representation of
16 petitioner or to indicate an inability to do so. If the Federal Public Defender is unable to
17 represent petitioner, the Court then shall appoint alternate counsel. A deadline for the filing
18 of an amended petition and/or seeking other appropriate relief will be set after counsel has
19 entered an appearance. The Court anticipates setting the deadline for approximately one
20 hundred twenty (120) days from entry of the formal order of appointment. No deadline
21 established herein or extension thereof will establish in and of itself a basis for tolling of the
22 federal limitation period.

23 IT FURTHER IS ORDERED that petitioner's motion for leave to file a longer than
24 normal petition is GRANTED and that the Clerk shall note the grant of the motion by this order
25 on the docket in a manner consistent with the Clerk's current practice.¹

26 ////

27
28 ¹Nothing in the grant of petitioner's motions signifies tacit acceptance of all of petitioner's arguments
in support of the motions. Moreover, the filing of the original petition does not signify that the petition is free of
deficiencies. The original pleading is being filed in anticipation of the filing of a counseled amended petition.

1 IT FURTHER IS ORDERED, so that the respondents may be electronically served with
2 any papers filed through counsel, that the Clerk shall add the state attorney general as
3 counsel for respondents and shall make informal electronic service of this order upon
4 respondents by directing a notice of electronic filing to her. Respondents' counsel shall enter
5 a notice of appearance within **twenty-one (21) days** of entry of this order, but no further
6 response shall be required from respondents until further order of this Court.

7 **Hard copies of exhibits for this case shall be sent to the Clerk in Las Vegas.**

8 The Clerk accordingly shall SEND a copy of this order to the *pro se* petitioner, the
9 Nevada Attorney General, the Federal Public Defender, and the CJA Coordinator for this
10 Division and shall regenerate notices of electronic filing of all prior filings for both counsel.

11 DATED: February 18, 2014.

12
13
14 
15 ROBERT C. JONES
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28